

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL MISC.APPLICATION No. 4303 of 2007
With
CRIMINAL MISC.APPLICATION No. 7368 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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BAVCHANDBHAI BHIKHABHAI CHUDASMA - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance in Criminal Misc. Application

No.4303/2007:

MR HN JHALA for Applicant(s) : 1,

MR AY KOGJE APP for Respondent(s) : 1,

Criminal Misc. Application No.7368/2007:

MR KB PUJARA for Applicant(s) : 1,

MR AY KOGJE APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 16/08/2007

CAV JUDGMENT

1. Both the above applications are filed by the applicants under Section 439 of the Code of Criminal Procedure. Against both the applicants C.R.No.I-2/2007 came to be registered at Talaja Police Station, Dist:Bhavnagar on 2.1.2007 for the alleged offence under Section 302 of Indian Penal Code read with Section 120-B, 201 and 114 of Indian Penal Code

and also under Section 135 of Bombay Police Act.

2. As per the case of prosecution and as it reveals from the charge sheet that the deceased Batukbhai Balubhai Dhameliya of village Rajpara, Taluka: Talaja was found dead at village Juni Devli for which entry in Talaja Police Station Diary No.9/2007 was registered on 1.1.2007 and upon identification by the complainant uncle of the deceased inquest was held on 1.1.2007 and F.I.R. came to be registered on 2.1.2007 on 00:30 hours. No names of the present applicants were found in the F.I.R. It is stated that deceased was killed by some one. Thereafter further investigation was held and on the basis of the statement of some of the witnesses and co-accused, the applicants are arrested.

3. Shri K.B.Pujara, learned advocate appearing in Criminal Misc. Application No.7368/2007 and Shri H.N.Jhala, learned advocate appearing in Criminal Misc. Application No.4303/2007 jointly submitted that case against the present applicants is based on circumstantial evidence, since no eye witness is found. Not only that but charge sheet is already filed and now statement of witnesses are available and mainly the witnesses Rameshbhai Labhshankar Jani, Ashokbhai Devjibhai Goyal, Himmatbhai Madhurbhai Jani, Ashmitaben daughter of Narberam Shivshankar Dhandhaliya do not implicate the applicants in the alleged commission of crime. Even the statement of Vilasben wife of Dharshibhai Vaghela in her statement

dated 6.1.2007 stated that at night before the date of incident at about 8.00 O'Clock Batukbhai and two other persons came to her hut and demanded liquor and other two persons were standing along with motorcycle on road. She could not see them because of darkness. However later on she states in her statement dated 11.1.2007 making improvement that she saw Batukbhai and two other persons in moonlight and she could identify if they are shown to her. However later on, no identification parade was held. Besides, Ilaben one of the co-accused before whom one of the applicant had narrated commission of crime is also not trustworthy and there appears no other incriminating material to connect the present applicants with crime, even if case of the prosecution about certain blood stains found on the cloths of one of the applicants is believed.

3.1. Shri H.N.Jhala, learned advocate appearing for other co-accused Bavchandbhai Chudasma submit that reliance of prosecution on statement of Manguben wife of Sureshbhai Bhayabhai Pandya was recorded on 4.1.2007 which reveals about intimate relationship with the lady of the accused and do not throw any light of the incident alleged. Even the applicant is involved on the basis of statement of co-accused and evidentiary value of panch witnesses can be looked into at the stage of trial.

4. Considering the above aspects, it is submitted by learned advocates that even in a case of

circumstantial evidence no link is found connecting the present applicants with the crime.

5. Learned advocates has placed reliance on decision of the Apex Court reported in **(2007) 3 SCC 755 in case of State of Goa vs. Sanjay Thakran and Another** to emphasis duty of the Court that what kind of evidence can be looked into in a case which is based on circumstantial evidence.

6. Learned APP Shri A.Y.Kogje appearing for the State submitted that considering the gravity of the crime and the applicants are involved in the offence punishable under section 302 and through the course of investigation there are statement of certain witnesses which implicate the present applicants and, therefore, the Court may restrain and may not exercise power under Section 439 of Cr.P.C.

6.1. It is further submitted by learned APP that some blood stains are found on the cloths of the applicants which indicate that they have committed crime. Even according to learned APP the statements of one Vilasben and Manguben state about presence of two persons along with Batukbhai just before the incident which took place.

7. Having heard learned advocates appearing for the parties, on perusal of the police papers contained in the charge sheet and statement of witnesses namely Vilasben, Manguben, Vashram Amarjibhai, Bhanjibhai

Jayshankarbhai, Gyanshambhai Bhanjibhai and other villagers, the same reveal about their knowledge of the incident as heard by them and no one has any further knowledge about the actual commission of crime and involvement of the present applicants. At this stage, I do not please to commend on the second statement made by Vilasben and even Baluben on 11.1.2007 after their initial statement which was recorded on 6.1.2007 by the investigating officer.

7.1. The statement of Manguben on the contrary reveals that Bhanjibhai Jayshankarbhai tried to blackmail her on the ground that Manguben had some intimate relationship with the deceased and exploited her. Therefore, statement of Bhanjibhai Jayshankarbhai was relied on the prosecution and again the evidentiary value can be gone into by the trial court.

8. Considering the over all circumstances, even on perusal of relevant material produced, prima facie, I am of the opinion that the case against the applicants which is based on circumstantial evidence even according to the prosecution, do not reflect involvement of the applicants in the alleged commission of crime and particularly the witnesses who have stated that they have seen Batukbhai and other two persons in the moonlight thereafter no identification was held and other statement of co-accused about involvement of the applicants in commission of crime, avoiding detail scrutiny of

evidence at this stage, I am inclined to enlarge both the applicants on bail.

9. In the facts and circumstances of the case, the application is allowed and the applicants are ordered to be released on bail in connection with first information report registered at C.R.No.I-2/2007 with Talaja Police Station, on their executing a bond of Rs.5,000/- (Rupees Five thousand only) each with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that they shall;

(a) not take undue advantage of their liberty or misuse their liberty;

(b) not act in a manner injurious to the interest of the prosecution;

(c) surrender their passport, if any, to the lower court within a week;

(d) not leave the State of Gujarat without prior permission of the Sessions Judge concerned;

(e) mark their presence at the concerned police station on the first Sunday of every month between 10.00 a.m. and 3.00 p.m. for three months only.

(f) furnish the present address of their residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

10. The Authorities will release the applicants only if they are not required in connection with any other offence for the time being.

11. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter.

12. Bail bond to be executed before the lower court having jurisdiction to try the case.

13. At the trial, the trial court shall not be influenced by the observations of preliminary nature, qua the evidence at this stage, made by this Court while enlarging the applicants on bail.

14. Rule is made absolute to the aforesaid extent.
D.S. Permitted.

[ANANT S. DAVE, J.]

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